IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11-06-2007

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

WRIT PETITION Nos.12894,13001,13002,13003,29846,32551,32552 & 32553 OF 2003

W.P.No.12894 OF 2003 and WP NO. 29846/03:

The Management of LUK India Private Ltd.
(Formerly known as Rane Luk Clutch Limited),
20, Rayakotai Road,
Hosur - 635 109,
Dharmapuri District,
rep.by its Dy.General Manager-Finance &
Secretary. ...Petitioner in WP NO. 12894/03
and 2nd Respondent in WP NO. 29846/03

-vs-

1.The Presiding Officer,
Labour Court,
Salem. .. 1st Respondent in WP NO. 12894/03 and 29846/03

2.K.Baskaran
3.K.Sambangiraman ... Respondents in 2 and 3 in WP NO. 12894/03 and Petitioners 1 and 2 in WP NO. 29846/03

WP NO. 13001/03 TO 13003 AND
32551 TO 32553/03

THE MANAGEMENT OF
LUK INDIA PVT.LTD.
(Formerly known as RANE LUK CLUTCH LIMITED)
NO. 20 Royakottai Road,
Dharmapuri District
REP.BY ITS DY.GENERAL MANAGER and Secretary

.. Petitioners in WP NO. 13001 to 13003/03 and 2nd Respondent in WP Nos. 32551 to 32553/03 respectively

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1. The Presiding Officer,
Labour Court, Salem .. 1st Respondent in WP Nos. 13001 to 13005/03 and WP NO. 32551 to 32553/03

J. Poosakkaran .. 2nd Respondent in WP NO. 13001/03 and Petitioner in WP NO. 32551/03

B. Sirarajan .. 2nd Respondent in WP NO 13002/03 and Petitioner in WPN O. 32552/03

P. Seeniraj .. 2nd Respondent in WP NO. 3003/03 and Petitioner in WP NO. 32553/03 respectively

prayer: To issue a writ of Certiorarified calling for the records of the 1st Respondent in ID NO. 158/99 and 159/99, ID 156/99, 10/99, 157/99 and quash the common award dated 08.01.2003 respectively

For petitioners in W.P.Nos.12894, 13001 to 13003/2003 & respondent 2 in W.P.Nos.29846 & 32551 to 32553/2003 : Mr.V.Karthic, for M/s.T.S.Gopalan & Co.

For petitioners in W.P.Nos.29846 and 32551 to 32553/2003 & respondents 2 & 3 in W.P.No.12894/2003 & respondent 2 in W.P.Nos.13001 to 13003/2003: Mr.C.K.Chandrasekar, for M/s.Row & Reddy.

COMMON ORDER

Since the issue involved in all these Writ Petitions is identical, all these Writ Petitions are being disposed of by a common order.

2. While in Writ Petition Nos.12894 and 13001 to 13003 of 2003 the petitioner/management has sought for quashing of the award of the Labour Court in toto, in the rest of the Writ Petitions, the petitioners/workmen have sought for quashing of the award in so far as it relates to the denial of back wages.

3. For the sake of convenience, let us take Writ Petition No.29846 of 2003. The petitioners were appointed as Operators in the second respondent management and, thereafter, they were made

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permanent. While so, on 30.07.1997, the respondent management issued a Charge Sheet to the petitioners, alleging that they, along with a group of employees, under the leadership of Sivarajan, demanded an audience with the President of the Company and threatened that they would enter his room, if denied permission, and prevented production, by stopping the machines. The petitioners submitted an explanation, dated 06.08.1997, denying the said allegations. Not satisfied with the explanation, the management ordered domestic enquiry. After going through the materials, the enquiry officer found that the charges levelled against the petitioners were proved beyond doubt. On the basis of the said findings of the enquiry officer, the management dismissed the petitioners from service on 06.10.1998. Aggrieved over the same, the petitioners approached the Labour Court.

4. The case of the second respondent/management before the Labour Court was that the activities of the petitioners would amount to serious misconduct under the Standing Orders of the Company and, considering the nature and gravity of the charges, they were dismissed from service, after giving due opportunity, and, therefore, the dismissal of the petitioners was proper and that they were not entitled for reinstatement and back wages and, as such, the petitions were liable to be dismissed.

5. The Labour Court, after analysing the materials available before it, set aside the punishment of dismissal and ordered reinstatement of the petitioners with continuity of service and other benefits, but without back wages.

6. Not satisfied with and aggrieved over the said award of the Labour Court, the workmen and the management have approached this Court, by way of these Writ Petitions.

7. Mr.C.K.Chandrasekar, learned counsel for the petitioners/workmen, would contend that the petitioners are not responsible for the misconducts, alleged to have been committed by them, and, since more than 20 workers accompanied the petitioners, action was taken against the petitioners alone and the other workers were let off without any action; the differential action is illegal and, therefore, the petitioners were subjected to victimisation.

8. In support of his contentions, learned counsel for the workmen relies on the following judgments :

(i)1993 (1) L.L.N.777 (Indian Oil Corporation Ltd., Madras. v. Second Additional Labour Court, Madras, and another) ;

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(ii)1997 (3) L.L.N.550 (M.Rajamanickam v. Bharat Heavy Electricals Ltd.) ;

(iii)1983 (2) L.L.J.232 (Workmen, E.V.L. v. Engine Valves Ltd.) ;

(iv)1984 (1) L.L.J.161 (Sengara Singh and others v. State of Punjab and others) ;

(v)1984 (2) Supreme Court Cases 569 (Ved Prakash Gupta v. Delton Cable India (P) Ltd.) ;

(vi)2001 (3) L.L.N.269 (P.D.D.P.T.Munnettra Sangam v. Management of Pioneer Mills Ltd.) ;

(vii)2002 (1) L.L.N.1116 (Shamsher Singh v. Pepsu Road Transport Corporation, Patiala, and another) ;

(viii)2004 (8) Supreme Court Cases 222 (Nicks (India) Tools v. Ram Surat and another) ;

(ix)2006 (1) Supreme Court Cases 368 (Union of India and another v. Major Bahadur Singh) and

(x)2006 (3) CTC 391 (K.Marappan v. The Deputy Registrar of Co-operative Societies, Namakkal).

9. On the other hand, Mr.V.Karthic, learned counsel for the respondent/management, would contend that using an abusive language against the superior officer and preventing the fellow workmen from attending work is a grave misconduct; the management is entitled to impose any kind of punishment on the employees, when the employees affect the movements of goods and persons; more particularly, the petitioners have not challenged the validity of the domestic enquiry and the findings of the enquiry officer and, hence, the punishment imposed by the disciplinary authority cannot be interfered with.

10. To substantiate his contentions, learned counsel for the management relies on the following decisions :

(i)Vol.91 F.J.R.577 (V.Venugopal v. Reed Relays and Electronics Ltd.);

(ii)1969 (2) Supreme Court Cases 13 (The Workmen of the Motor Industries Co.Ltd. v. The Management of the Motor Industries Co.Ltd., Bangalore) ;

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(iii)2000 (1) L.L.J.424 (Mahendra Nissan Allwyin Ltd. v. M.P.Siddappa and Another) ;

(iv)2002 (2) L.L.N.407 (R.Aruchamy v. General Manager, Sri Sarada Mill and Another) ;

(v)2003 (III) L.L.N.930 (Management of Sundaram Industries Ltd. v. Presiding Officer, Labour Court, and another) ;

(vi)2005 (I) L.L.J.1129 (Mahindra and Mahindra Ltd. v. N.B.Naravade);

(vii)2005 (3) Supreme Court Cases 331 (Muriadih Colliery v. Bihar Colliery Kamgar Union) ;

(viii)2005 (3) Supreme Court Cases 401 (M.P.Electricity Board v. Jagdish Chandra Sharma) ;

(ix)2006 (1) Supreme Court Cases 430 (Hombe Gowda Educational Trust and another v. State of Karnataka and others);

(x)2006 (4) L.L.N.800 (Uttar Pradesh State Road Transport Corporation, Dehradun, v. Suresh Pal) ;

(xi)2006 (4) L.L.N.890 (Sahil Khan v. Hashmat and Company) and

(xii)2007 (1) Supreme Court Cases 222 (A.P.S.R.T.C. v. Raghuda Siva Sankar Prasad) .

11. At this juncture, the sole question, which arises for consideration is, whether the punishment imposed by the management on the workmen is proportionate ?

12. In this context, it would be relevant to refer to a decision of the Supreme Court in Ved Prakash Gupta v. Delton Cable India (P) Ltd., 1984 (2) Supreme Court Cases 569, wherein it was held as follows :

> "13. ....The Charge levelled against the appellant is not a serious one and it is not known how the charge even if proved would result in any much less total loss of confidence of the management in the appellant as the management would have it in the charge. It was argued in the Labour Court that there was no previous

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adverse remark against the appellant. There is nothing on record to show that any previous adverse remark against the appellant had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the appellant even if he had abused in filthy language Durg Singh and S.K.Bagga. We are therefore of the opinion that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him. We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal on the employee and that victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory. We therefore hold that the termination of the appellant's service is invalid and unsustainable in law and that he is entitled to reinstatement with full back wages and other benefits including continuity of service...."

13. In the decision relied on by the learned counsel for the workmen in Indian Oil Corporation Ltd., Madras. v. Second Additional Labour Court, Madras, and another, 1993 (1) L.L.N.777, it was held by a Division Bench of this Court as follows :

"....when the evidence with regard to the misconduct of number of workmen is identical, the employer must give rational or reasonable explanation for awarding differential punishment to the different workmen on the same evidence. In other words, if different workmen are similarly placed with regard to the nature of evidence let in against them by the management in the domestic enquiry and if the workmen are covered by the same set of facts and circumstances, the employer cannot single out a particular workman for the discriminatory treatment while awarding punishment. If some workers are arbitrarily weeded out for discriminatory and more severe treatment than those who were similarly situated, the Courts will not hesitate to frown upon such discriminatory treatment....."

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That was a case, where both driver and helper of an oil tanker were charged with same offences; statement of facts and evidence let in before the enquiry committee were common to both, but while the petitioner, namely, helper was dismissed from service, driver was awarded lesser punishment of withholding of three increments. Under those circumstances, it was held that the differential treatment meted out to the petitioner, namely, helper, vis-a-vis the driver was not legal. However, that is not the case here. In the present case, all the workmen, who are charged, are awarded equal punishment. Therefore, the above decision is of no help to the workmen.

14. Admittedly, the workmen have not challenged the validity of the domestic enquiry and the findings of the enquiry officer. Though several workers accompanied the petitioners, the petitioners alone were chargesheeted and they were thrown out from service. Awarding of punishment is purely a question of fact and it depends upon the discretion of the disciplinary authority. Each case should be decided on its own facts and circumstances. Under Section 11-A of the Industrial Disputes Act, the Labour Court has power to set aside or modify the punishment, when the punishment imposed by the disciplinary authority is not justified. It is true that the employer is entitled to impose a major punishment, but it should be proportionate to the charges framed.

15. Considering the nature of charges, the Labour Court has held that the punishment of dismissal imposed by the management on the workmen is disproportionate and, consequently, ordered reinstatement with continuity of service and other benefits, which, in my view, cannot be said to be perverse, in view of the decision of the Supreme Court in Ved Prakash Gupta v. Delton Cable India (P) Ltd., referred to above. Therefore, I do not find any reason to interfere with the award passed by the Labour Court, on that score.

16. However, as regards the finding with regard to back wages, I see some reason to interfere with the award. Considering the fact that the workmen have put in ten years of service and they have lost a further service of ten years during the pendency of the proceedings and still they have service for ten more years pursuant to reinstatement, I direct the management to pay 50 % of the back wages, due to the workmen, within a period of two months from today.

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17. In the result, Writ Petition Nos.29846 and 32551 to 32553 of 2003, filed by the workmen, are allowed in part and Writ Petition Nos.12894 and 13001 to 13003 of 2003, filed by the management, are dismissed. No costs.
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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

The Presiding Officer,
Labour Court,
Salem.

2. The Section Officer, VR Section, High Court
Madras

+2ccs to M/s. Row and Reddy Advocate sr no. 34123, 34124
+2ccs to M/s. T.S. Gopal and Co Advocate sr no. 33537

MBS(cO)
NM(20.06.07)

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